

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

BENJAMIN C. REYES

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CRIMINAL NO. 4:21-CR-072-ALM-CAN

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the Government's request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court held a hearing held on June 11, which was continued on June 21, 2021, to determine whether Defendant violated his supervised release. Federal Public Defender Michelle Allen-McCoy represented Defendant on both June 11 and 21, 2021. Assistant United States Attorney Tracey Batson represented the Government on June 11, 2021, and Assistant United States Attorney Lesley Brooks represented the Government on June 21, 2021.

On September 29, 2003, United States District Judge Julie A. Robinson of the District of Kansas entered an Amended Judgment, which sentenced Defendant to a term of two hundred forty (240) months' imprisonment, followed by ten (10) years of supervised release. *See* No. 5:02-cr-40073, Dkt. 98 (D. Kan. Sept. 29, 2003). On February 11, 2019, Defendant completed his term of imprisonment and began completing his term of supervised release in the Northern District of Texas. *See id.* at Dkt. 109 (D. Kans. Oct. 22, 2019).

On September 11, 2019, during his term of supervised release in the Northern District of Texas, Defendant was indicted in the Eastern District of Texas for Conspiracy to Possess with Intent to Manufacture and Distribute Methamphetamine. *See* No. 4:19-cr-242, Dkt. 15 (E.D. Tex. Sept. 11, 2019). On May 6, 2021, United States District Judge Amos L. Mazzant, III, sentenced

Defendant to a term of one hundred sixty-eight (168) months' imprisonment, to be followed by five (5) years of supervised release. *See id.* at Dkt. 372 (E.D. Tex. May 6, 2021). Defendant's sentence from the Eastern District of Texas was to run consecutively from the sentence issued by the District of Kansas. *See id.*

On September 24, 2019, while the criminal charge in the Eastern District of Texas was pending, the U.S. Probation Officer of the District of Kansas filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition"). *See* No. 5:20-cr-40073, Dkt. 108 (D. Kan. Sept. 24, 2019). The Petition asserts Defendant violated the following condition of supervision: Defendant shall not commit another federal, state, or local crime. *Id.* On April 14, 2021, prior to Defendant's sentencing from Judge Mazzant, the District of Kansas transferred jurisdiction for supervised release to this District. *See* No. 5:20-cr-40073, Dkt. 111 (D. Kan. April 14, 2021); No. 4:21-cr-72, Dkt. 1 (E.D. Tex. Apr. 14, 2021).

The Petition asserts that Defendant violated his condition of supervised conditions because he was indicted in the Eastern District of Texas in Criminal Action No. 4:19-cr-242. On June 11 and 21, 2021, the Court conducted a final revocation hearing on the Petition. *See* No. 4:21-cr-72 Dkts. 3, 11 (E.D. Tex. June 11 and 21, 2021). Defendant entered a plea of true to the allegation. *See id.* at Dkt. 11. Defendant also consented to revocation of his supervised release and waived his right to object to the proposed findings and recommendations of the United States Magistrate Judge. *See id.* at Dkt. 12. The Court finds that Defendant has violated the terms of his supervised release, and thus, his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, and having considered the arguments presented at the June 8, 2021 hearing, the Court recommends that Defendant be committed to the

custody of the Bureau of Prisons to be imprisoned for a term of fifty-one (51) months, with no supervised release to follow. The Court further recommends that Defendants' sentence shall run consecutively from the sentence imposed in Criminal Action No. 4:19-cr-242.

So ORDERED and SIGNED this 23rd day of June, 2021.

A handwritten signature in black ink, appearing to read "K C Johnson".

KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE